

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION

- - -

4 KEVIN TRUDEAU and : No. 02 C 1586

5 ROBERT BAREFOOT :

:

6 vs. :

:

7 DIRECT MARKETING CONCEPTS

8 INC., and DONALD :

9 BARRETT, JR. :

10 March 25, 2002

- - -

11 Oral Deposition of ALLEN
12 STERN, held at the Valley Forge Hilton,
13 DeKalb Pike, King of Prussia,
14 Pennsylvania, commencing at 3:20 p.m., on
15 the above date, before MARIA N. DAMIANI,
16 Registered Professional Reporter,
17 Certified Shorthand Reporter for New
18 Jersey and Delaware, and Notary Public.

19 - - -
20 - - -

- - -

21 ESQUIRE DEPOSITION SERVICES
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EXHIBIT

Triad-49
7/15/05 JSW

1
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3

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1
2 ALLEN STERN, after
3 having been duly sworn, was
4 examined and testified as follows:
5
6 EXAMINATION
7
8 BY MR. HURTADO:
9 Q. Mr. Stern, could you please
10 state your full name for the record?
11 A. Allen Stern.
12 Q. And my name is Dan Hurtado
13 and I represent Mr. Trudeau and
14 Mr. Barefoot, and you are here for
15 deposition today pursuant to a subpoena;
16 is that correct? Is that correct?
17 A. I'm -- is it a subpoena?
18 MS. HESSE: Yes.
19 THE WITNESS: Yes.

20 BY MR. HURTADO:
21 Q. Otherwise, you are also here
22 voluntarily?
23 A. I'm here voluntarily.
24 Q. Okay. Have you had your

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1 deposition taken before?
2 A. For this?
3 Q. No, at all?
4 A. Yes.
5 Q. You have? Have you had
6 several depositions taken?
7 A. One time.
8 Q. Just one time, how long ago
9 was that?
10 A. Over a year.
11 Q. And I will just briefly go
12 through the ground rules which I am sure
13 you are familiar with.
14 Of course, you understand
15 that you're under oath today and even
16 though there's no judge here you are
17 under oath as if you were in a court?
18 A. Correct.
19 Q. Okay. And I will be asking
20 you a series of questions and you will do
21 your best to answer them. And if you --
22 if I phrase a question that you don't
23 understand, which is eminently likely,
24 please ask me to rephrase or let me know

ALLEN STERN

6

1 that you don't understand.
 2 Is that okay with you?
 3 A. Sure.
 4 Q. Okay. And we can take
 5 breaks if you need, we won't be here too
 6 long, but if you need a break, certainly
 7 let me know and we will try to
 8 accommodate that.
 9 If a question is pending you
 10 should answer the question before we take
 11 a break, unless there's an issue of
 12 attorney/client privilege.
 13 A. Okay.
 14 Q. I think that's it.
 15 Do you have any questions of
 16 me.
 17 A. None.
 18 Q. -- before we begin?
 19 A. No.
 20 Q. Okay. Mr. Stern, have you
 21 done anything to prepare yourself for
 22 this deposition?
 23 A. Not really.
 24 Q. Okay. Anything at all to

1 A. About the issues.
 2 Q. All right.
 3 A. Yeah.
 4 Q. Were you speaking of
 5 conversations regarding the deposition?
 6 A. None.
 7 Q. Okay. Did you have any
 8 conversations or discussions with
 9 Mr. Barrett today after his deposition?
 10 A. I had lunch and said
 11 goodbye.
 12 Q. And any discussions about
 13 the substance of his deposition?
 14 A. Not substantive.
 15 Q. Okay.
 16 A. Not substantive.
 17 Q. Can you tell me what your
 18 current occupation is?
 19 A. I'm president of King Media
 20 and Triad Marketing.
 21 Q. And what do those two
 22 entities do? Let's start with Triad
 23 Marketing, what is Triad Marketing's
 24 business?

7

1 prepare for it?
 2 A. I read the -- the -- the
 3 filings that you guys did.
 4 Q. The court filings?
 5 A. The court filings.
 6 Q. Did you read anything else?
 7 A. And I read your response.
 8 Q. Okay. Did you meet with
 9 counsel prior to the deposition?
 10 A. We had dinner last night,
 11 but that was just a welcome dinner.
 12 Q. You didn't discuss the
 13 deposition at that meeting?
 14 A. Not really.
 15 Q. Have you spoken to anyone
 16 other than counsel regarding the
 17 deposition today?
 18 A. I spoke to Mr. Trudeau.
 19 Q. Oh, okay.
 20 A. And Mr. Barrett.
 21 Q. When did you speak to
 22 Mr. Barrett about the deposition?
 23 A. Not about the deposition.
 24 Q. Oh, okay.

1 A. Triad Marketing's business
 2 is a product marketing and management
 3 company.
 4 Q. And what does that mean?
 5 A. It means a number of
 6 things: It means that we buy and sell
 7 products, we do packaging, we write
 8 brochures, we -- we handle all of the
 9 communications with respect to marketing
 10 infomercials and those sorts of
 11 activities, very different from King
 12 Media.
 13 King Media is a -- a buying
 14 agency that doesn't take title or buy
 15 products or deal with fulfillment
 16 companies, et cetera. It is solely there
 17 to buy and negotiate television time.
 18 Q. Okay.
 19 A. So we are clear, King Media
 20 is actually the company that's been in
 21 business much longer than Triad. Triad
 22 just came in to play a part in our
 23 overall business strategies in 1996.
 24 Q. Okay. How long has King

8

9

ALLEN STERN

10 1 Media been in business?
 2 A. Ten years.
 3 Q. Okay. And you are president
 4 of both organizations?
 5 A. I am.
 6 Q. What is the corporate
 7 relationship between Triad and King
 8 Media?
 9 A. Triad would be a client of
 10 King Media.
 11 Q. So there's no common
 12 ownership between those two entities?
 13 A. Yeah, I'm the president of
 14 both of them.
 15 Q. All right. And do you own
 16 both of those companies?
 17 A. I have -- I have a
 18 percentage ownership in both those
 19 companies.
 20 Q. They are both corporations?
 21 A. Uh-huh.
 22 Q. And they are both
 23 incorporated in Pennsylvania?
 24 A. Actually, no, Delaware.

12 1 A. Uh-huh.
 2 Q. Have you seen this document
 3 before?
 4 A. I have not.
 5 Q. All right. Did you have any
 6 conversations with Mr. Barrett about any
 7 affidavit that he had submitted this
 8 morning?
 9 A. I have not.
 10 Q. I would just like to show
 11 you something in here, if you'd turn to
 12 paragraph 13 of the affidavit.
 13 A. Uh-huh.
 14 Q. I would just like to read
 15 what that says, pursuant to DMC's
 16 agreement with Triad ML Marketing. Triad
 17 handled all management of the Coral
 18 Calcium infomercial, including purchasing
 19 the product from a manufacturer, the
 20 processing of customer orders, packaging
 21 and shipping of the product to
 22 customers. Any sales, i.e., the
 23 processing of credit card purchases, are
 24 performed by Triad. Triad also handles

11 1 Q. Both are incorporated in
 2 Delaware?
 3 A. I think Triad is
 4 Pennsylvania, but King Media is
 5 definitely in Delaware.
 6 Q. And you are the -- you own a
 7 controlling interest in both of those
 8 companies?
 9 A. Correct.
 10 Q. Okay. Do either of those
 11 companies have any formal or corporate
 12 affiliation with Direct Marketing
 13 Concepts?
 14 A. None.
 15 Q. All right. Completely
 16 independent?
 17 A. Completely.
 18 Q. Okay. I would like to start
 19 here, Mr. Stern, by showing you what's
 20 been previously marked this morning as
 21 Barrett Exhibit Number 9.
 22 A. Uh-huh.
 23 Q. And this is an affidavit of
 24 Donald Barrett, Jr.

13 1 the payment of any royalties for the
 2 show.
 3 Do you agree with the
 4 statements in that paragraph?
 5 A. Yes.
 6 Q. Okay. Anything in that
 7 paragraph you don't agree with?
 8 A. No.
 9 Q. All right. It mentions here
 10 an agreement between DMC and Triad, are
 11 you familiar with that agreement?
 12 A. There's no written
 13 agreement.
 14 Q. Okay. So it's your
 15 assumption he's referring here to an oral
 16 agreement?
 17 A. The -- the agreement is
 18 this: His agreement with Triad is no
 19 different than anybody else who brings us
 20 a deal. That's what it is.
 21 He brings us a deal, we
 22 think the deal looks good, we -- we begin
 23 to market.
 24 Q. Okay. And what is the

ALLEN STERN

1 consideration that Triad receives for
 2 marketing the infomercial?
 3 A. We get a piece of the
 4 profit.
 5 Q. Okay. Mr. Barrett indicated
 6 that you split the profits; is that
 7 correct?
 8 A. Correct.
 9 Q. Okay. What do you consider
 10 Triad's obligations to be to DMC pursuant
 11 to that oral agreement?
 12 A. Well, our obligations are to
 13 make sure that vendors get paid, to make
 14 sure that customers get satisfied to the
 15 best of our ability, and to make sure
 16 that the program is running as
 17 efficiently and -- and as
 18 cost-effectively as possible.
 19 And the better Triad can do
 20 its job, the better King Media could do
 21 its job, and the better the program does
 22 and the happier our customers are. And
 23 -- and that's what the overall goal of
 24 what Triad does is in terms of developing

14
 1 A. We vend out as a custom in
 2 our business, and Triad for sure, we look
 3 for the lowest competitive price from a
 4 number of different quality vendors, so
 5 we don't select just one vendor generally
 6 for one product unless there's something
 7 that require they make something so
 8 special and so unique that we can't go
 9 anywhere else for it.

10 That is unusual in our
 11 business. Why? It's a consumer
 12 business, so you generally can find other
 13 manufacturers who would like to compete
 14 for that business and it keeps the
 15 playing field even. Okay?

16 Q. And if Mr. Barrett directs
 17 you to purchase product from a specific
 18 manufacturer, would you comply with that
 19 request?

20 A. I would comply with that
 21 request as long as Mr. Barrett or anybody
 22 else understood that there's -- there's a
 23 good reason to go to other vendors who
 24 could make a product that does not

15
 1 the program.
 2 Q. Okay. Who has the
 3 decision-making power with respect to all
 4 of these activities mentioned by
 5 Mr. Barrett in paragraph 13 of his
 6 affidavit?
 7 A. Mostly Triad.
 8 Q. Are there instances in which
 9 Mr. Barrett or DMC has decision-making
 10 authority?
 11 A. He has input, but I -- I
 12 would venture to say that -- that
 13 ultimately the final decision with
 14 respect to who we buy product from, how
 15 we package the product, how we manage the
 16 program, an ongoing program, is generally
 17 he would defer to us on that.
 18 Q. That's because of your
 19 experience and expertise in it?
 20 A. I have been doing it fifteen
 21 years longer than Donald Barrett.
 22 Q. So, for example, who decides
 23 what manufacturers from whom to purchase
 24 product?

17
 1 compromise the quality.
 2 You might be able to secure
 3 better terms and conditions of sale, you
 4 might be able to secure a faster delivery
 5 time, you might be able to get a vendor
 6 that's closer to your distribution
 7 center, so there's a variety of reasons
 8 why you want to use more than one vendor.

9 So I'm always willing to be
 10 compliant, but -- but -- but there needs
 11 to be a willingness that as related to a
 12 vendor, that you want to be able to look
 13 to more than one vendor. We've learned
 14 sorry lessons in the past by doing that.

15 Q. Would you regard Mr. Barrett
 16 as having the ultimate authority
 17 regarding the decision who to purchase
 18 product from?

19 A. I thought I just answered
 20 that.

21 Q. Well, I'm not sure you did.

22 A. Ask me again.

23 Q. If after advising
 24 Mr. Barrett regarding the wisdom of his

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18
1 choice of manufacturer he nevertheless
2 directs you to purchase product from a
3 specific manufacturer, would you regard
4 yourself as contractually obligated to do
5 so?

6 A. I'm not contractually
7 obligated to do anything. Let me tell
8 you what our agreement is, our agreement
9 is a deal. Okay? It's no different than
10 any other deals that have been brought to
11 me.

12 It says we would like you to
13 get involved in this project, if you
14 would like to, and here's what we would
15 like you to do, okay, potentially with
16 Triad and King, and -- and then we begin
17 to negotiate what the deal is going to
18 be.

19 So there hasn't come to the
20 point where he says you have to do this
21 because I'm telling you to do this. If
22 he -- if it came to that point on any
23 issue I may capitulate, I don't know.

24 Did that answer your

20
1 to mention to Mr. Barrett that his
2 recommendations are probably not
3 grounded. In fact, unless he had some
4 special deal, it would be just something
5 that might have come across his desk, you
6 know.

7 Q. Okay. You notice that the
8 last part of that paragraph 13 in the
9 affidavit says, Triad also handles the
10 payment of any royalties for the show?

11 A. Correct.

12 Q. That's correct?

13 A. Uh-huh.

14 Q. Okay. Is it accurate that
15 no royalties have been paid to date under
16 this arrangement to Robert Barefoot in
17 excess of paying for product?

18 A. That would be incorrect.

19 Q. Why is that?

20 A. Because -- because if you
21 looked at the -- at the quote that he
22 has, it says it was \$4.32 including
23 royalty. Look at the paperwork. \$4.32
24 including royalty.

19
1 question?

2 Q. For now.

3 Who makes the decision of
4 where or from whom to purchase media
5 time?

6 A. King Media.

7 Q. Okay. If Mr. Barrett asked
8 you to purchase media time from a certain
9 outlet in a certain market, would you
10 comply with that request?

11 A. No.

12 Q. Why not?

13 A. Because Mr. Barrett is not
14 -- is not a media guy and King Media is
15 a very well-respected media agency in
16 this business, so it would be foolhardy
17 for Mr. Barrett to try to determine where
18 and how and when King Media should buy
19 advertising time.

20 If that would be the case,
21 then King Media is not doing its job and
22 there's numerous clients that would
23 testify that King Media does a very good
24 job, so in that respect I would try to --

21
1 Q. We will. Okay.

2 A. Okay? Would you like to
3 know the deal with Robert Barefoot? I
4 can tell it to you real quickly.

5 Q. We will get into that.

6 Okay?

7 A. Okay.

8 So to answer your question,
9 your question is incorrectly phrased.
10 Robert Barefoot was under our agreement
11 the way we saw the agreement, he may see
12 it different, being paid including his
13 royalties when he was getting \$4.32.

14 Q. And that was my question,
15 actually, has he been paid royalties in
16 excess of the amount that was paid for
17 the cost of the products?

18 A. He was being paid \$4.32 a
19 bottle which included his royalties.

20 Q. Okay. Is it accurate that
21 Mr. Kevin Trudeau has not been paid
22 royalties on the sale of Coral Calcium?

23 A. That would be correct.

24 Q. Why not?

ALLEN STERN

22

1 A. Because Mr. Trudeau still
 2 owes \$12,500 for a second show which he
 3 has failed to perform.

4 Q. Okay. Do you know of any
 5 written agreement between Mr. Trudeau and
 6 you or DMC that requires him to do both
 7 shows before he can be paid royalties?

8 A. There's no written agreement
 9 between Kevin Trudeau and Triad
 10 Marketing, however, I think there is an
 11 agreement between one of Kevin's
 12 employees that says clearly that
 13 Mr. Trudeau is to do the show for \$25,000
 14 and five percent.

15 And I might add, there's
 16 nothing anywhere that suggests when those
 17 royalties would be paid, however, there
 18 can be no royalties paid until Kevin
 19 either fulfills his obligation or we look
 20 at how much has been profited in terms of
 21 royalty payments, and that would be put
 22 against the \$12,500 that Kevin still owes
 23 back in a second show.

24 So as soon as those royalty

24

1 that means we would have to look at the
 2 accounting and our controller would and
 3 say therefore you are entitled to
 4 royalties this Friday. It's just a point
 5 of economics.

6 Q. So what you're saying is
 7 that as of now the royalties generated by
 8 the Coral Calcium product have not
 9 exceeded \$12,500?

10 A. I don't know the answer to
 11 that.

12 Q. Let's look at paragraph 17.
 13 of Mr. Barrett's affidavit. It says, per
 14 my agreement with Triad and in accordance
 15 with my agreement with Mr. Barefoot,
 16 Triad is responsible for making all
 17 royalty payments to Mr. Barefoot.

18 Do you agree with that
 19 statement?

20 A. I do.

21 Q. Okay. And so is it the case
 22 that you have an obligation to
 23 Mr. Barrett to make royalty payments to
 24 Barefoot?

23

1 dollars are gone, that means Kevin then
 2 would be entitled to his royalty.

3 Q. Now, the \$25,000 was paid to
 4 Mr. Trudeau to shoot the two
 5 infomercials; is that correct?

6 A. Correct.

7 Q. And the royalties would be
 8 paid with respect to sales generated by
 9 the infomercial; isn't that correct?

10 A. That's correct.

11 Q. Okay. All right. So what
 12 is the basis for your contention that
 13 Mr. Trudeau should not be paid for
 14 royalties with respect to sales
 15 independently of whether he's done both
 16 infomercials for which he would get the
 17 25K payment?

18 A. Because if Kevin Trudeau's
 19 royalties does not exceed the 12.5 or
 20 once they exceed the \$12,500, then his
 21 royalties obviously he would be -- he
 22 should be paid for those royalties.

23 If, on the other hand, Kevin
 24 Trudeau says here's \$12,500 back, okay,

25

1 A. No, I have an obligation to
 2 Barefoot.

3 Q. What is that obligation?

4 A. One dollar a bottle over
 5 cost, and costs are determined by
 6 wherever we get the best price for the
 7 product given that the product does not
 8 change; in other words, we are not going
 9 to make a worse product. So whatever the
 10 cost of the product is, 37, 54, 75, 4
 11 cents, it doesn't matter. Okay? His
 12 royalty does not change, he gets one
 13 dollar a bottle in royalty.

14 Q. Okay. Do you have an
 15 agreement with Mr. Barefoot?

16 A. No.

17 Q. Okay. That's what I was
 18 asking you.

19 A. No. His agreement with
 20 Barefoot the way we have read the
 21 agreement seems clear to us, okay, that's
 22 where the issue is, that he is entitled
 23 to a dollar a bottle.

24 Q. All right. Now, my question

ALLEN STERN

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1 is, with respect to this statement here
 2 in paragraph 17 that Triad is responsible
 3 for making all royalty payments to Mr.
 4 Barefoot --

5 A. That's true.

6 Q. So my question is whether
 7 you have a contractual obligation,
 8 whether Triad has a contractual
 9 obligation to Barefoot to make royalty
 10 payments?

11 A. No.

12 MS. HESSE: I will object on
 13 the basis that it calls for a
 14 legal conclusion.

15 MR. HURTADO: You can still
 16 answer.

17 THE WITNESS: I think the
 18 agreement is between the -- the
 19 written agreement is between DMC
 20 and Barefoot, but the
 21 understanding if you look at the
 22 six letters that Bob Barefoot said
 23 is that those royalty payments as
 24 all royalty payments would come

28

1 your agreement with Barrett that you will
 2 make royalty payments to Barefoot?

3 A. Correct.

4 Q. That's what I was trying to
 5 get at. It's not quite as complicated as
 6 it seemed.

7 If Mr. Barrett directed you
 8 to make additional royalty payments to
 9 Mr. Barefoot, would you do so?

10 A. Yes.

11 Q. Okay. I'm now showing you,
 12 Mr. Stern, what's been premarked as
 13 Barrett Exhibit Number 8.

14 A. Uh-huh.

15 Q. And it's a document that
 16 says King Media, Incorporated, at the top
 17 and entitled distributor agreement?

18 A. Correct.

19 Q. Are you familiar with this
 20 document?

21 A. I am.

22 Q. And so can you tell me what
 23 it is?

24 A. It's an agreement that

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1 from Triad.

2 BY MR. HURTADO:

3 Q. So the source of your
 4 responsibility, though, to pay those
 5 royalties, is that an agreement with
 6 Barrett or an agreement with
 7 Mr. Barefoot?

8 A. It's -- it's -- the
 9 agreement to pay the royalties is an
 10 agreement between Barrett and Barefoot
 11 wherein the -- but the only one that is
 12 capable of paying or of making those
 13 royalty payments would be us because we
 14 process the credit cards, it goes into
 15 our account.

16 Q. Okay.

17 A. So we are the ones that are
 18 processing those orders, we are the ones
 19 that do the accounting, we are the ones
 20 that pay those royalties.

21 Q. All right. And so when he
 22 says per my agreement with Triad Triad is
 23 responsible for making all royalty
 24 payments to Barefoot, so it's part of

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1 Mr. Barrett has with distributors who
 2 would like to air, market, this
 3 infomercial.

4 Q. Okay. And could the
 5 distributors that would be filled in
 6 these blanks be any one of a number of
 7 distributors?

8 A. Could be.

9 Q. Any distributors?

10 A. Could be.

11 Q. Is there an agreement like
 12 this in existence that relates to the
 13 Coral Calcium infomercial?

14 A. This would be for the Coral
 15 Calcium, but it could be used for the
 16 benefit of any of them.

17 Q. My assumption was this was
 18 just a standard agreement without the
 19 name filled in; is that not correct?

20 A. It's relatively standard.

21 It could be used for any infomercial and
 22 this Coral Calcium infomercial is one of
 23 them.

24 Q. Okay. If you look at

ALLEN STERN

<p>1 paragraph 3 in that it says, King Media 2 is the agency of record for those 3 programs and in its capacity will have 4 final authority over where distributor 5 shows will air?</p> <p>6 A. Correct.</p> <p>7 Q. Is that a correct statement?</p> <p>8 A. That's a correct statement.</p> <p>9 Q. Who is King Media the agency 10 of record for?</p> <p>11 A. King Media is the agency of 12 record for -- the media agency of record 13 for where these distributors would like 14 to air the show.</p> <p>15 So here's what happens: 16 They send where they would like to run 17 the show to where the dub house is, the 18 dub house sends over where they would 19 like to run the show, and I look at where 20 they would like to run it, and then we in 21 our capacity as the media agency of 22 record make those decisions and say fine 23 or they are not fine.</p> <p>24 And the reason that's there</p>	<p>30</p> <p>1 question.</p> <p>2 Q. Are you performing this 3 service that you just talked about? Is 4 King Media performing this service on 5 behalf of any entity or entities?</p> <p>6 A. I still don't understand 7 your question.</p> <p>8 Q. Okay.</p> <p>9 A. You want me to explain it 10 again to you? I will be more than happy 11 to and see if I can answer it for you.</p> <p>12 Q. Okay.</p> <p>13 A. Let me see if I can.</p> <p>14 Q. King Media -- first of all, 15 if you could briefly explain what it is 16 again that King Media does as the agency 17 of record, I would appreciate that?</p> <p>18 A. Okay. King Media gets a 19 list from each one of these distributors 20 where they would like to run the show. 21 Okay? So these distributors don't know 22 where their other distributors run the 23 show. And what we're trying to do is 24 keep them in a non-competitive situation.</p>
<p>1 is because we don't want these 2 distributors competing with each other on 3 the same stations, which causes nothing 4 but aggravation and creating competition 5 where there's no need for it. So there 6 needs to be somebody there who is saying 7 this distributor is already on this 8 station so you go to another station and 9 that's why we put it there.</p> <p>10 Q. Okay. And if you understand 11 this question, who is the or who are the 12 principals of the agency?</p> <p>13 A. I don't understand.</p> <p>14 MS. HESSE: I will object 15 because it assumes that what we 16 are talking about is a legal sense 17 of the word agency versus what the 18 -- what the witness has already 19 testified is the media agency.</p> <p>20 BY MR. HURTADO:</p> <p>21 Q. As an agency is there a 22 party or parties that King Media 23 represents?</p> <p>24 A. I don't understand your</p>	<p>31</p> <p>1 question.</p> <p>1 So if one distributor is 2 running on a station that distributors -- 3 and the other distributors would not run 4 the same station if they would run on 5 another station, so this way these 6 distributors feel they are not competing 7 against one another and there's somebody 8 there who is directing traffic, if you 9 will.</p> <p>10 So King Media is the media 11 policeman for these distributors.</p> <p>12 Q. Okay. And what is King 13 Media's compensation or consideration for 14 acting as the policeman for those 15 distributors?</p> <p>16 A. None.</p> <p>17 Q. Okay. So why does King 18 Media do it?</p> <p>19 A. Because I have seen these 20 programs happen before and they blow up. 21 They blow up because these distributors 22 very quickly start fighting with one 23 another and the program comes to a halt 24 because they see the other distributors</p>

ALLEN STERN

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1 not as -- not as allies but as -- nothing
 2 more or less than competitors.
 3 So in order to make this
 4 thing work, that is why it was important
 5 to have somebody who was the traffic
 6 policeman for the -- for the media and
 7 distribution of these shows as it relates
 8 to these distributors.

9 Q. And why is -- and I take it
 10 that's important to King Media?

11 A. No, it's important -- we
 12 felt it was important for these
 13 distributors in order to have this
 14 program survive or at least begin to take
 15 some shape, and so far it's worked out
 16 fine.

17 Q. All right. But why is that
 18 important to King Media to have that lack
 19 of --

20 A. It's not necessarily
 21 important to King Media. I mean, it's
 22 just I didn't want to have stations and
 23 these distributors calling me and -- and
 24 -- and screaming at our company because

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1 Triad that the purchasing of media time
 2 be coordinated or policed?
 3 A. It matters to the sanctity
 4 of the program that somebody is sitting
 5 there one step removed from the
 6 distributors' day-to-day business that
 7 can keep everybody out of each other's
 8 hair.

9 Let me explain, maybe flush
 10 this out for you a little bit. These
 11 guys run their own business, they are
 12 independent business people just like we
 13 are.

14 Q. You mean the distributors?

15 A. Just like we are, right,
 16 just like DMC is, so -- so these guys do
 17 everything on their own. Whatever their
 18 businesses are, I don't know what they
 19 are even, but as it relates to being
 20 involved in this program they are needed
 21 to be -- from what I have saw in these
 22 programs in the past there needed to be
 23 some kind of policeman, if you will, that
 24 keeps everybody out of each other's way

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1 they are finding themselves in a
 2 competitive situation with other
 3 distributors.

4 It was just a way to keep
 5 everybody on the same page. If there was
 6 no distributor from a King Media
 7 perspective, that would be fine.

8 Q. Okay.

9 A. So we are not compensated,
 10 and, in fact, we don't even buy their
 11 time, they buy their own time.

12 Q. In other words, the
 13 distributors supply the funds for
 14 purchasing media time?

15 A. Correct.

16 Q. Okay. Does DMC provide any
 17 funds for purchasing media time?

18 A. No.

19 Q. Does Triad provide any funds
 20 for the purchase of media time?

21 A. Triad is the client.

22 Q. The client of King Media?

23 A. Correct.

24 Q. Okay. So it matters to

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1 and keeps these guys all relatively
 2 happy.

3 And so far, again, I can
 4 just tell you that it seemed to have
 5 worked pretty good. They don't have one
 6 of these guys around falling over one guy
 7 and the next guy falling over another guy
 8 and then call us and yelling at us and
 9 causing a lot of headache and confusion.

10 So that's why we wanted to
 11 put something in place so everybody who
 12 joins this program would know some of the
 13 ground rules.

14 Q. Okay. Is it your view,
 15 Mr. Stern, that Donald Barrett owns the
 16 Coral Calcium show?

17 A. Yes.

18 Q. What's that view based on?

19 A. It's based on that I saw a
 20 note that says what Donald Barrett sent
 21 money to Kevin for and he was going to
 22 get something for that money that he
 23 sent.

24 I think, if I remember

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is to get two
5,000. There might be
1 there regarding
end payments, but
e note that I read –
arrett paid him \$25,000
and produce two

I'm going to
been premarked as Barrett

u can look at
hibit 2 to that
rd the back?

: signature page.

e E-mail that
o?

any other E-mail
luded in what you're
than this?

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1 A. Next week.
 2 Q. Right. So that E-mail does
 3 not constitute a contract, does it?
 4 A. I think it does.
 5 Q. Why do you think that?
 6 A. KT will have a contract to
 7 you next week. In essence, I believe it
 8 will be 25K for two shows and five
 9 percent on the back end.
 10 Q. Do you have any reason to
 11 believe that Mr. Sant is authorized to
 12 bind Mr. Trudeau to a contract?
 13 A. I think he is.
 14 Q. On what basis?
 15 A. Because what we seen on
 16 another deal where Kevin gets a royalty
 17 check above his name is on that as well.
 18 Q. Mr. Sant's signature?
 19 A. No, it says payment to care
 20 of Neil Sant, c slash o, so he obviously
 21 has some relationship to Kevin Trudeau or
 22 he wouldn't have sent that.
 23 Q. The question is, do you have
 24 any reason to believe that he has

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e only E-mail that

And could you look at
message from Mr. Sant

ld you, you know, do
I just read what the note

have a contract to
essence, I believe it
shows and five
k end.
So that says that KT
n contract to you next
ight?

says, in essence, I
these \$25,000 and five
k end?
Correct.
contemplates a
that is to be sent in
hat right?

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1 authority to sign contracts for
 2 Mr. Trudeau or to bind Mr. Trudeau to the
 3 contract?
 4 MS. HESSE: And I will
 5 object just on the basis of asked
 6 and answered.
 7 Go ahead.
 8 MR. HURTADO: Go ahead.
 9 THE WITNESS: I don't know.
 10 MR. HURTADO: All right.
 11 THE WITNESS: I think it is
 12 clear that he does, but I guess
 13 you will have to ask Kevin what
 14 the exact relationship of Neil
 15 Sant is to Kevin Trudeau.
 16 MR. HURTADO: Uh-huh.
 17 BY MR. HURTADO:
 18 Q. But as far as your
 19 understanding of the relationship between
 20 him and between Mr. Trudeau, you don't
 21 know that Mr. Sant has the authority to
 22 bind Mr. Trudeau to a contract?
 23 A. Well, I don't know what his
 24 relationship is to Kevin, again, but he

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1 probably has some relationship or he
2 would not have sent back KT will have a
3 contract to you next week. In essence, I
4 believe it will be 25K for two shows at
5 five percent on the back end.

6 I don't think anyone who has
7 no relationship to Kevin would send
8 something if he had no authority to send
9 something.

10 Q. But certainly you understand
11 there's a difference between having a
12 relationship with someone and having the
13 legal authority to bind them to a
14 contract?

15 A. Ask Kevin Trudeau.

16 Q. No. My question was, you
17 understand there's a difference between
18 those two things?

19 A. I think there's a
20 difference, but I don't know -- again, I
21 don't know the relationship that Neil
22 Sant has with Kevin Trudeau, but I'm
23 going to assume that he has a
24 relationship of some authority or he

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1 would -- he would -- nobody would have
2 responded and said something like that if
3 they had no authority and no relationship
4 to Kevin Trudeau.

5 Q. Right. But the question is
6 whether they would -- whether they might
7 respond like that even though they don't
8 have the authority to bind that person to
9 the contract?

10 A. I can't answer that.

11 MS. HESSE: Objection.
12 Calls for speculation.

13 THE WITNESS: Yeah, I can't
14 answer that. I can't answer.

15 BY MR. HURTADO:

16 Q. Okay. Have you been
17 involved in the negotiating of a contract
18 between Mr. Trudeau and Mr. Barrett
19 relating to the Coral Calcium?

20 A. No. Here's what I was
21 involved in: I was involved in trying to
22 get something better and more fully
23 developed wherein Mr. Trudeau and
24 Mr. Barrett could live with one another

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1 wouldn't have sent a note to Don, KT will
2 have a contract to you next week. In
3 essence, I believe it will be 25K for two
4 shows. It's pretty definitive.

5 Q. Pretty definitive as passing
6 on the message from Mr. Trudeau that he
7 will send a contract, right?

8 A. It's pretty definitive.

9 Q. Right. Well, I would like
10 an answer to my question.

11 It's pretty definitive that
12 he's passing on a message from
13 Mr. Trudeau to Mr. Barrett that Mr.
14 Trudeau will send him a contract?

15 A. And, in essence, I believe I
16 think I is Neil. Is I Neil?

17 Q. Uh-huh.

18 A. I believe it will be \$25,000
19 for two shows and five percent on the
20 back end.

21 Q. Right.

22 A. So -- so he obviously has
23 some authority and some relationship or
24 he would not have responded, right? He

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1 and there would be no need to come to
2 this kind of situation, and I still
3 believe that's the case.

4 Q. I'm sorry, you still believe
5 what's the case?

6 A. I still believe that should
7 be the case, that -- that there should be
8 somebody, somewhere who can intervene,
9 which is what I tried to do to get these
10 guys on the same page so we could run the
11 show and pay everybody their royalties
12 and everybody would have a good time.

13 That was the idea, to try to
14 -- to intervene and try to help out the
15 situation, to no avail I might add.

16 Q. Were you asked to intervene
17 by Mr. Barrett?

18 A. He sent me the -- the --
19 this contract, this wish list of four
20 pages that Kevin sent weeks after the
21 show was on the air, and I said let me
22 see if I can help try to get this thing
23 moved forward.

24 Q. So did he ask you to

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1 intervene on his behalf?

2 A. He asked me to take a look
 3 at it and I asked him would he have any
 4 problems if I intervened on his behalf.
 5 and he thought that might be a good idea,
 6 because it seemed that the two of them
 7 were increasingly getting further and
 8 further apart and since I didn't have
 9 that animosity with Kevin or have that --
 10 that negative relationship, I thought
 11 maybe I could be successful, and I still
 12 believe that's possible.

13 Q. Okay. Mr. Barrett stated
 14 this morning that he asked you to become
 15 involved and that you were negotiating
 16 the contract on his behalf; is that
 17 correct?

18 A. I think it was a two-way
 19 street. I think he sent it to me -- as I
 20 said, I called him up I said maybe I can
 21 help, and he said great, go help.

22 Q. Okay.

23 A. So I think it was both of us
 24 trying to work together to get something

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1 A. I don't remember, so I don't
 2 know where I faxed it to. It could have
 3 been to his home in California, I just
 4 don't remember.

5 Q. Okay. And the first
 6 sentence there says, thank you for
 7 sending me a copy of the talent agreement
 8 for signature?

9 A. Uh-uh.

10 Q. Is that referring to the
 11 prospective talent agreement between
 12 Mr. Trudeau and Mr. Barrett relating to
 13 Coral Calcium?

14 A. Correct.

15 Q. If you would look at the
 16 second paragraph it says, I think the
 17 five percent royalty you are asking for
 18 is an open issue until we see which
 19 version of the show works.

20 So as of January 10, 2002,
 21 the percentage rate of the royalty was
 22 still an open issue?

23 A. The -- there was a question
 24 over this gross and net language.

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1 done that wasn't getting done, and I
 2 thought he felt that he may not be the
 3 best person to do it.

4 Q. Why is that?

5 A. Him and Kevin were
 6 increasingly moving further apart.

7 Q. Uh-huh. Well, let me get
 8 into some of these exchanges, these
 9 correspondences here.

10 A. Sure.

11 Q. I'm showing you what's been
 12 marked previously as Barrett Exhibit
 13 Number 2. It's a letter or I should say
 14 a memorandum from yourself to Mr. Trudeau
 15 dated January 10th, 2002?

16 A. Correct.

17 Q. I take it you have seen this
 18 document before?

19 A. Correct.

20 Q. And you authored it?

21 A. Correct.

22 Q. Okay. To what location did
 23 you send this memorandum to Kevin
 24 Trudeau?

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1 Q. So that's what your --

2 A. So that was open.

3 Q. But the -- the percentage
 4 rate itself was not open, the five
 5 percent?

6 A. It was five percent, yeah.

7 Q. Okay. So it was still open
 8 as to whether or not it would be gross or
 9 net?

10 A. Correct.

11 Q. Okay. And as of January
 12 10th that was still an open issue?

13 A. It was still an open issue.

14 Q. All right. Looking down to
 15 point number 10, and I apologize
 16 beforehand, I don't have the draft
 17 agreement that this is pertaining to, but
 18 looking at point number 10 it says or it
 19 says point number 10 should be reviewed
 20 by legal counsel with respect to claims
 21 made by Robert Barefoot.

22 Do you recall or understand
 23 what that's referring to?

24 A. Yeah, it was in reference to

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1 the talent agreement that Kevin sent over
 2 talking about indemnification and claims
 3 made by Barefoot. Clearly nobody on our
 4 side could sign off on something on
 5 claims or representations that we didn't
 6 make, so somebody needs to look at it and
 7 it wasn't going to be us.

8 Q. Okay. Is that the case --
 9 well, let me ask you, looking at the next
 10 page, point 12 through 14, needs to be
 11 reviewed by legal counsel?

12 A. Uh-huh.

13 Q. And do you recall what that
 14 is referring to?

15 A. Yeah, it was regarding
 16 around the FTC problems that we found out
 17 later that Kevin had. It was regarding
 18 this past criminal situation that Kevin
 19 had that was kind of -- kind of sprung on
 20 us. It was regarding indemnification of
 21 Kevin with respect to claims or
 22 representations about what Barefoot said,
 23 what -- which we had no input into
 24 whatsoever, Barefoot said what Barefoot

1 or your answers go way beyond what I ask,
 2 which is fine but --

3 A. I think you deserve an
 4 answer to the question.

5 Q. Well, but the question here
 6 was quite simple, that as of January
 7 10th, 2002, you and Mr. Barrett were
 8 aware of those issues?

9 A. We were aware of those
 10 issues.

11 Q. Right. Okay.

12 MS. HESSE: And I guess I
 13 would like to just make a record
 14 here, when you say aware of those
 15 issues, I guess I would like -- I
 16 guess I would like to make a point
 17 on the record it's a little
 18 unclear as to what those issues
 19 are other than what the witness
 20 already stated, which is that
 21 there were some claims by Kevin
 22 Trudeau for indemnification and
 23 something with respect to the FTC.

24 MR. HURTADO: Well,

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1 said on his own volition.
 2 So I thought all those
 3 points should be reviewed by some
 4 lawyers.
 5 Q. All right. So at least as
 6 of January 10th, 2002, you were -- you
 7 were aware of these issues regarding
 8 indemnification and compliance with the
 9 FTC regulations?

10 A. After Kevin sent these four
 11 pages after the show was on the air, he
 12 then started sending this new full-blown
 13 agreement that contained a number of
 14 points that were -- were, A, new and, B,
 15 difficult to -- to -- to -- to agree to
 16 in the framework that he -- that he --
 17 that he posited.

18 I mean, it was just very,
 19 very difficult, and given that I thought
 20 it might be important for him and for
 21 everybody to have some lawyers actually
 22 start taking a look at some of this
 23 stuff.

24 Q. Sometimes your questions go

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1 Mr. Stern just, you know,
 2 testified at fair length about
 3 what those issues were and that's
 4 what I was referring to, the
 5 issues that he had just gone
 6 through testifying to.

7 MS. HESSE: Okay. I just
 8 want it to be limited to that and
 9 not some broader aspect that this
 10 infomercial for some reason had
 11 any problems, because I don't
 12 think that's what we're talking
 13 about.

14 THE WITNESS: Uh-huh.

15 BY MR. HURTADO:
 16 Q. I would like to show you
 17 what's previously been marked as Barrett
 18 Exhibit 3.

19 A. Uh-huh.

20 Q. This is a letter on King
 21 Media letterhead?

22 A. Uh-huh.

23 Q. Dated January 16, 2002.

24 It's from yourself, Mr. Stern, to David

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<p style="text-align: center;">54</p> <p>1 Bradford of Jenner & Block. Do you 2 recognize this letter? 3 A. I do. 4 Q. You sent this to David 5 Bradford in Chicago? 6 A. Correct. 7 Q. First sentence says, I 8 received your note this morning. I have 9 indeed sent my comments to Kevin for 10 review and comment. I will also send 11 them on to you this morning. 12 Is it your understanding 13 that the comments are -- that these 14 comments refers to the Exhibit Number 2 15 that we just looked at? 16 A. I think it is this. 17 Q. Exhibit 2, right? 18 A. Yeah. 19 Q. Okay. 20 A. Uh-huh. 21 Q. And so as of January 16th, 22 2002, there was still no executed written 23 contract between Mr. Trudeau and DMC? 24 A. No, I think there was, the</p>	<p style="text-align: center;">56</p> <p>1 A. No. 2 Q. So you are not a lawyer? 3 A. Uh-uh. 4 Q. Is that right? 5 A. And your point is? 6 Q. I'm not here to make 7 points. 8 A. So you asked me if I am not 9 a lawyer, no, I am not a lawyer. 10 Q. I'm showing you, Mr. Stern, 11 what's been marked as Barrett 4. It's a 12 letter on King Media letterhead and it's 13 to Mr. David Bradford dated January 22, 14 2001. Do you see that? 15 A. Correct. 16 Q. Is that your signature at 17 the bottom? 18 A. That is. 19 Q. Okay. And this was copied 20 to Mr. Donald Barrett; is that correct? 21 A. Correct. 22 Q. Okay. And is this letter 23 referring to again to the negotiations of 24 the contract between Kevin Trudeau and</p>
<p style="text-align: center;">55</p> <p>1 only contract that I can point to is the 2 one between what Donald sent and what 3 Donald received from Neil, which is not 4 to say that anyone was unwilling to do 5 something bigger and better and more 6 full-blown for both sides, and that is 7 what these letters between me and 8 Mr. Bradford were trying to get to. 9 Q. You understand what I mean 10 when I say an executed contract? 11 A. No. 12 Q. Okay. Let me rephrase the 13 question then. 14 As of January 16, 2002, 15 there was no signed written contract 16 between Mr. Trudeau and DMC; isn't that 17 correct? 18 A. There's no signed written 19 contract between Kevin Trudeau and DMC, 20 but there is in my opinion a contract 21 between Kevin and/or his representatives 22 or employees and DMC. 23 Q. Okay. By the way, 24 Mr. Stern, do you have a law degree?</p>	<p style="text-align: center;">57</p> <p>1 DMC and/or Triad? 2 A. It reflects a lot of -- more 3 than that. It reflects trying to bring 4 all of us together in a conference call 5 so we can clear up any confusion that 6 might exist because it is -- in these 7 back and forth memoranda between David 8 Bradford and myself it didn't seem 9 productive, that it wasn't moving 10 forward. 11 So what I tried to do in the 12 spirit of -- of cooperation was to get 13 all of us involved in trying to work this 14 thing through. So this note was sent to 15 try to get everybody together in a 16 conference call on that date. That was 17 the point of this memorandum. 18 Q. Okay. And the ultimate 19 purpose of this was to reach agreement on 20 a written contract that would be executed 21 by both parties? 22 A. No. No. No. Not at all. 23 The -- the reason to have a conference 24 call was to try in the spirit of -- of</p>

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1 trying to play on the same side of the
 2 fence was to get everybody on the phone
 3 and Kevin Mr. Bradford said was going to
 4 be available in California, Mr. Bradford
 5 was going to be available in Chicago,
 6 Mr. Barrett was going to be available in
 7 Boston, and I was going to be available
 8 here in Philadelphia.

9 So the -- so the reason to
 10 have this communication was to make sure
 11 that everybody was talking from the same
 12 hymnal book. That was the reason to have
 13 this conference call, which did take
 14 place.

15 Q. Did take place at the time
 16 indicated in the letter?

17 A. Very close.

18 Q. All right. What happened
 19 during that conference call?

20 A. Mr. Trudeau -- I was told by
 21 Mr. Bradford that morning that
 22 Mr. Trudeau unfortunately would not be
 23 available, and I don't know why, but he
 24 was not going to be available.

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1 twenty-minute conversation.

2 Q. Was it nevertheless
 3 contemplated at this point in time
 4 January 22nd, 2001, or thereabouts that
 5 the parties would both sign the written
 6 agreement?

7 A. No, it was -- what we were
 8 trying to do was get all of us together
 9 so we could sort out any of the issues,
 10 and if we had to have a second more.
 11 fully-developed contract outlining all
 12 the points getting rid of all the
 13 confusion, hopefully with David
 14 Bradford's assistance and Kevin Trudeau's
 15 willingness to cooperate and Donald
 16 Barrett's willingness to cooperate and my
 17 willingness to cooperate we could get rid
 18 of this and move on to more productive
 19 things. That was why I initiated this
 20 conference call with all of us.

21 Q. All right. I'm showing you
 22 now Barrett Exhibit 5.

23 A. Right.

24 Q. It is a document that has at

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1 And then I said, do you
 2 think that you and me and Mr. Barrett
 3 should still get in this conference call
 4 and try to sort this thing through? He
 5 thought it was a good idea. We did, in
 6 fact, have that conference call.

7 Q. And what was said during
 8 that call?

9 A. In that conference call I
 10 tried to give him a clear understanding
 11 of what we were trying to do in terms of
 12 this show and in terms of how we were
 13 trying to go to markets and in terms of
 14 testing and trying to package the product
 15 properly and get the best consumer
 16 response doing all the things a good
 17 marketing company does.

18 So I made him aware of where
 19 we were at, and it was kind of an overall
 20 status report. He thanked me profusely.
 21 He thought it was -- it was very, very
 22 nice of -- of Donald Barrett and myself
 23 to bring him up to speed as quickly and
 24 as succinctly as we did in that

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1 the top Triad Marketing TM entitled
 2 talent agreement. Are you familiar with
 3 this document?

4 A. I think, and I can be wrong,
 5 that this was an agreement when Erik
 6 Petersen of Monte & McGraw took over the
 7 negotiations where I was not able to move
 8 it forward. I think that's what this
 9 is.

10 Q. Are you not certain of that,
 11 though?

12 A. Can I look at it?

13 Q. Absolutely.

14 A. (Reviewing.)

15 I think there is the first
 16 draft that I actually did and then the
 17 second draft was between Erik and
 18 Mr. Bradford. So I think there's another
 19 subsequent agreement, draft, that was
 20 from Mr. Petersen and Monte & McGraw to
 21 Bradford.

22 So I think this is one that
 23 I actually wrote myself.

24 Q. Okay. And, in fact, do you

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1 see at the bottom it was faxed somewhere
 2 around January 29, 2002?
 3 A. Correct.
 4 Q. So this was in existence at
 5 least as early as January 29, 2002?
 6 A. Correct.
 7 Q. And I take it at that point
 8 that Mr. Petersen had not yet gotten
 9 involved?
 10 A. I think he came a couple of
 11 weeks later.
 12 Q. Is this a revision of
 13 something that Mr. Trudeau had sent to
 14 you or to DMC?
 15 A. This was the next iteration
 16 of trying to get something bigger,
 17 better, and more robust. That's what
 18 this is.
 19 Q. And I note this list in
 20 addition to Direct Marketing Concepts
 21 Triad Marketing as a party to the
 22 agreement?
 23 A. Triad, yeah. In actuality
 24 if Triad was going to be an additional

1 Q. Did anybody ask you?
 2 A. No.
 3 Q. And you don't recall exactly
 4 why you did add Triad as a party?
 5 A. It came from me so it was
 6 either on King letterhead or Triad
 7 letterhead.
 8 Q. I guess if you look at the
 9 first paragraph, maybe I'm confusing you,
 10 it says this commercial talent agreement
 11 is entered in to this blank between Kevin
 12 Trudeau and Direct Marketing Concepts and
 13 Triad Marketing?
 14 A. Correct.
 15 Q. So the question is why you
 16 added Triad Marketing as a party to the
 17 contract?
 18 A. Because we were involved.
 19 We were involved. We were involved.
 20 Q. Any other reason?
 21 A. No.
 22 Q. Okay. You know what, if you
 23 look down to paragraph 3, it indicates
 24 that -

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1 party it would be Triad and not King, so
 2 that is accurate.
 3 Q. And why was Triad Marketing
 4 added as a party to this draft agreement?
 5 A. No reason. Should have
 6 probably had DMC on there, but since I
 7 wrote it I sent it.
 8 Q. Well, it does have DMC, but
 9 it has Triad as well. Do you see that?
 10 A. Yeah. Well, and it really
 11 would not have mattered to us if we were
 12 part of it or not part of it, but Mr.
 13 Bradford said a week later when Erik got
 14 involved that Triad is not party to this
 15 agreement, so therefore Triad -- any
 16 agreement that we eventually get to
 17 bigger and better than the initial
 18 agreement contract won't have Triad or
 19 King Media in the agreement and -- and
 20 Erik acknowledged that.
 21 Q. All right. Prior to that
 22 did Mr. Barrett ask you to see if Triad
 23 could be a party?
 24 A. He never asked.

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1 A. Uh-huh.
 2 Q. For the term of this
 3 agreement the company will pay talent a
 4 royalty of blank percent of the gross
 5 receipt, of the adjusted gross receipts
 6 in all of the above sold by the company
 7 through a commercial in which talent has
 8 appeared?
 9 A. Correct.
 10 Q. Then it goes on to define
 11 adjusted gross receipts?
 12 A. Correct.
 13 Q. Okay. So at this point in
 14 time you were willing to pay a royalty on
 15 adjusted gross receipts as opposed to
 16 net?
 17 A. Correct.
 18 Q. Okay.
 19 A. And I am still not -- still
 20 not opposed to putting together something
 21 on this five percent net and gross
 22 confusion which is going to be
 23 satisfactory to everybody. I don't think
 24 it's as big an issue as -- as -- as it

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1 may seem on its face so I'm not opposed.
 2 Q. But that leaves the amount
 3 of the percentage blank here at least in
 4 this paragraph?

5 A. Yeah.

6 Q. So at that point it was --
 7 as far as you were concerned, the
 8 percentage rate was an open item?

9 A. Not really. I think there
 10 was an agreement that it was five
 11 percent, but -- but when you have -- when
 12 you have quote, unquote, adjusted gross
 13 receipts, you need the excluded shipping
 14 and handling, you need the excluded
 15 refunds, you need to hold something back
 16 for returns.

17 If you look at Kevin's
 18 initial agreement he wanted -- he wanted
 19 to be paid five percent on all sales
 20 including shipping and handling and --
 21 and -- and that is something that I think
 22 is -- is not -- not really fair and it's
 23 generally not accepted standard practice
 24 in our industry.

1 We generally do not include
 2 shipping and handling in a royalty
 3 payment and you do get refunds, you have
 4 to make refunds and you get people who
 5 want to return their product, so I think
 6 it was fairly standard.

7 Q. So that's what this
 8 definition of adjusted gross receipts is
 9 driving at?

10 A. Yeah, trying to.

11 Q. Okay. If you look at
 12 paragraph 9 on the second page?

13 A. Uh-huh.

14 Q. Company agrees to indemnify
 15 talent for any and all liability claims
 16 and legal fees arising out of any breach
 17 by the company of its obligations
 18 hereunder or its representative in
 19 warranties with respect to product
 20 featured in the commercials?

21 A. Uh-huh.

22 Q. So at this point in time you
 23 were willing to have a provision to
 24 indemnify Mr. Trudeau for liability

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1 arising out of breaches by you and/or
 2 DMC?

3 A. Correct.

4 Q. Okay. And --

5 A. However, where the problem
 6 was was indemnifying Kevin not because we
 7 don't want to, it's because we can't
 8 indemnify to something we didn't say or
 9 something that we can't make
 10 representations about.

11 So I said to Mr. Bradford
 12 that we need to make sure that
 13 Mr. Barefoot is included because he is
 14 responsible for the claims made in
 15 relationship to -- to the sale of the
 16 product in this infomercial.

17 I didn't say it, Barrett
 18 doesn't say it, and even Kevin didn't say
 19 it, so I was trying again to be solemn in
 20 here and appease both sides.

21 Q. Okay. And in paragraph 9
 22 indemnification refers to liability for
 23 breaches by the company; isn't that
 24 right?

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1 A. Uh-huh.

2 Q. Okay. Paragraph 10, company
 3 acknowledges that talent is subject to a
 4 consent decree with the Federal Trade
 5 Commission and agrees to take all
 6 reasonable steps to ensure the show is
 7 produced in compliance with that consent
 8 decree. Company agrees to indemnify
 9 talent for any and all liability, claims
 10 associated therewith arising out of any
 11 legal proceedings whatsoever, including
 12 but not limited to, investigation or
 13 proceedings initiated by the FTC?

14 A. Correct.

15 Q. Okay. So at this point in time,
 16 sometime in late January 2002, you
 17 were willing to include a provision to
 18 indemnify Kevin Trudeau for liability
 19 arising from proceedings initiated by the
 20 FTC?

21 A. Correct.

22 Q. Okay. In paragraph 11 it
 23 states, company acknowledges that talent
 24 has been convicted of two felonies?

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A. Correct.

Q. And at this point in time you were willing to include a provision in the contract acknowledging that Mr. Trudeau has been convicted of two felonies?

A. Correct.

Q. Okay. In paragraph 12, company acknowledges that if talent's legal counsel believes that the commercials are in any way in violation of any state or federal laws or in violation of talent's consent decree with the FTC, upon written notice company will cause to change commercial in order to satisfy talent's legal consent. Talent nor its legal counsel will not unreasonably withhold its approval?

A. Correct.

Q. At this time you were willing to include a provision, include this provision?

A. Correct.

Q. Can you just take a look at

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1 portion or duty under this agreement. Do 2 you see that?

3 A. Yes.

4 Q. So at this point in time you 5 wanted a provision in there that would 6 prevent Mr. Trudeau from signing the 7 right to his name and likeness?

8 A. Correct.

9 Q. Okay. So as of the time of 10 this draft, there was still no signed 11 written agreement between Mr. Trudeau and 12 DMC?

13 A. No, there was a written 14 agreement between Kevin Trudeau and/or 15 his representatives and/or his employees 16 with DMC.

17 The idea here was to try to 18 more fully develop and expand the 19 situation in this -- this jam 20 that we were in so Kevin could get what 21 he was looking for and Barrett could 22 still have what he wanted and all the 23 parties would be happy.

24 If it does not come to

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paragraph 13 and we won't read it out loud and can you just take a quick look at that, I won't impose that upon you.

A. (Witness complies with request.)

Okay.

Q. Okay? So as of the date of this draft you were willing to include a provision in which Mr. Trudeau grants to you the right to use his name and likeness?

A. Yeah. Talent grants company the right to use its name and likeness.

Q. Looking at paragraph 15 --

A. Uh-huh.

Q. -- and starting with the last sentence it starts in that paragraph with the due to the unique nature?

A. Uh-huh.

Q. Due to the unique nature of talent's name and likeness and the personal nature of the services talent shall not be entitled to assign this agreement or assign or delegate any

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1 fruition, it was nothing more than draft 2 agreements between David Bradford and 3 myself.

4 Q. So there was no signed 5 written agreement as of this time between 6 Mr. Trudeau and DMC?

7 A. No, there was an agreement 8 between DMC and Kevin Trudeau and/or his 9 representatives or his employees and 10 there is no -- there was no other 11 agreement other than that one.

12 So what we were attempting 13 to do here was to come up with a better, 14 more fully-developed agreement that would 15 make everybody happy and we could all go 16 on our merry ways. That was what the 17 drive here was, at least that was what I 18 was looking to do.

19 Q. But still there was no 20 signed agreement between Kevin Trudeau 21 and DMC?

22 A. The only agreement that I 23 have seen related to this project and 24 program was the agreement between Neil

ALLEN STERN

1 and saying that Kevin, KT, is looking for
2 \$25,000 and five percent.

3 Q. All right.

4 A. That's the only agreement
5 that I have seen in the weeks that this
6 show has been -- has been developed.

7 Q. I'm showing you what's been
8 marked as Barrett Exhibit Number 7.

9 A. Okay.

10 Q. And this is a letter on
11 Monte & McGraw letterhead?

12 A. Correct.

13 Q. From Mr. Petersen to
14 Mr. Bradford, and it's copied to Triad as
15 well as to Direct Marketing Concepts?

16 A. Correct.

17 Q. And attached to it is what
18 appears to be a draft agreement?

19 A. Correct.

20 Q. Okay. Have you seen this
21 before?

22 A. I have.

23 Q. Is this something that
24 Mr. Petersen prepared?

1 royalties being based on net profit?

2 A. No, I don't go back to it.

3 Mr. Petersen went back to the only thing
4 he could go back to, which was a letter
5 from Mr. Barrett to Mr. Trudeau that says
6 I'm willing to pay you five percent of
7 the net, so he tried to be legally
8 precise. And that's why he writes five
9 percent of the net, because he could only
10 go by that which I had which was a letter
11 from Mr. Barrett to Mr. Trudeau which
12 says five percent of the nets.

13 Q. So you did not make

14 Mr. Petersen aware of the negotiations
15 that you had been having with
16 Mr. Trudeau?

17 A. No. Of course he has all
18 the documents you want.

19 Q. I'm sorry, he?

20 MS. HESSE: I think it's
21 Exhibit Number 5 you are looking
22 for.

23 MR. HURTADO: Number 5?
24 Thanks.

1 A. Correct.

2 Q. All right. And did he
3 prepare this in consultation with you?

4 A. Some parts he did, some
5 parts he didn't, some parts he took the
6 lead because he is a lawyer.

7 Q. Okay.

8 A. Uh-huh.

9 Q. In this agreement Triad is
10 not posed as a party; is that correct?

11 A. Correct.

12 Q. And Triad was removed as a
13 party at Mr. Bradford's behest?

14 A. Correct.

15 Q. And you had no problem with
16 that?

17 A. No.

18 Q. Paragraph number 3, even
19 though you were at one time willing to
20 agree to that the royalties would be on
21 the adjusted gross receipts as defined in
22 the prior draft?

23 A. Correct.

24 Q. You now go back to the

1 BY MR. HURTADO:

2 Q. So Mr. Petersen was provided
3 with a copy of what's marked here as
4 Exhibit Number 5?

5 A. Yeah, he has everything.

6 Q. All right. Okay. So is
7 there any reason that he couldn't have
8 continued with the negotiations as they
9 had been proceeding?

10 A. I think he did continue with
11 the negotiations and tried to continue
12 the -- with the negotiations and
13 unfortunately Mr. Bradford was unwilling
14 to continue the negotiations.

15 Q. Well, as of the time that
16 Exhibit 5 was generated you were -- you
17 were agreeable to having the royalties
18 based on the adjusted gross receipts?

19 A. I was agreeable to a number
20 of different things and I -- and I am
21 still very agreeable to doing a number of
22 different things, jump through hoops, if
23 you will, to make sure that Mr. Trudeau
24 and Mr. Barrett and Mr. Barefoot and us

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1 can all live together peacefully and
2 harmoniously, and there's no reason why
3 we shouldn't.

4 We are drawing lines in the
5 sand and at this point in time seems to
6 me silly, so what I tried to do with
7 Mr. Bradford in a number of letters and
8 conversations and draft agreements was to
9 get us together. It was failing. So I
10 asked Mr. Petersen to try to pick up
11 where I was being unsuccessful and that's
12 what that attempt is to do.

13 Q. Is there anything that would
14 have prevented Mr. Petersen from
15 retaining the provision providing for
16 royalties based on adjusted gross
17 receipts?

18 A. There's nothing that
19 prevented him from that. He could have.

20 Q. Did you instruct him to do
21 that?

22 A. We talked about it and he
23 said speaking as a lawyer I see five
24 percent of the net, it seems reasonable

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1 Mr. Trudeau had -- was convicted,
2 whatever the language is, criminal, I
3 don't know what the exact language is,
4 and what were the FTC issues?

5 Well, we didn't know them
6 until -- until -- until the show was on
7 the air for a month, so it was his
8 opinion I think, and you can ask him,
9 that we shouldn't agree to something that
10 we didn't know about. We only knew about
11 it after the fact.

12 Q. Do you know whether -- well,
13 did you -- let's start with you, did you
14 make any communications to either
15 Mr. Bradford or Mr. Trudeau prior to this
16 draft being sent regarding these
17 provisions being deleted?

18 A. We had no conversations
19 after that, I turned it over to Erik.

20 Q. Okay.

21 A. He -- the last conversation
22 I had with Mr. Bradford was a voicemail
23 message from Mr. Bradford who said these
24 aren't the exact words, but these are

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1 that we should say it's five percent of
2 the net. That's what he said in his
3 letter.

4 And I said -- I deferred. I
5 said okay.

6 Q. And you also I think note,
7 you may have to read through it, but that
8 all of the provisions regarding
9 indemnification, regarding compliance
10 with the FTC have been removed from this
11 draft?

12 A. Correct.

13 Q. And do you know why that is?
14 A. I don't know -- I know
15 generally, but I don't know -- you would
16 have to ask Mr. Petersen specifically.

17 Q. All right. Was that based
18 -- was that removal based on
19 conversations with you?

20 A. I had numerous conversations
21 with him.

22 Q. I'm sorry?

23 A. Okay. The conversations
24 circled around did we know that .

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1 close, Mr. Trudeau is not going to -- or
2 does not want to continue in this attempt
3 to come together if we are unwilling to
4 let him air the show, period.

5 And I called him back and I
6 left a voicemail, because he wasn't
7 there, and I said, it appears that this
8 is breaking down. I will send it over to
9 our legal counsel and they will try to
10 pick up where I have -- you know, we have
11 fallen off. And that was the end of it
12 and I -- we never talked again.

13 Q. Okay. Is your understanding
14 of what Mr. Bradford said in that
15 conversation was that Mr. Trudeau wanted
16 to exclusively air the show?

17 A. Mr. Trudeau wanted to air
18 the show.

19 Q. In addition to --

20 A. And he said -- initially in
21 our conversations I said that is
22 something that I think is not going to
23 happen. And he said in his voicemail to
24 me was that is, quote/unquote, a deal

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1 breaker.

2 Q. Okay. Just to clarify, it
 3 was to air the show not exclusively, but
 4 to air the show in addition to King
 5 Media?

6 A. With us, yeah.

7 Q. And you were not willing to
 8 do that?

9 A. I was not willing to do it
 10 unbridled, but -- but he didn't give me
 11 an opportunity to explain to him in
 12 detail why I think that would cause
 13 enormous difficulties for us and Kevin.

14 So I'm not willing --
 15 unwilling to continue to negotiate, and I
 16 even had what I thought was a reasonable
 17 solution that would allow Kevin to air
 18 Mr. Barrett's show that might help him
 19 and help us, but we never got to that
 20 conversation.

21 So then I turned it over to
 22 Erik and then Erik did what I guess
 23 lawyers do, and that is they try to
 24 protect their client and try to draft

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1 A. Correct.

2 Q. Have you seen this document
 3 before?

4 A. I have.

5 Q. Okay. Well, there should be
 6 one with Mr. Barrett's signature?

7 A. Do you not have that one?

8 Q. Yes, I do, but I wanted to
 9 ask you about this one.

10 A. Oh, I don't know. I'm sure
 11 I have seen it, but the one that I am
 12 most interested in is one that was signed
 13 by both parties.

14 Q. Have you ever seen this one
 15 before?

16 A. Maybe I have, I don't
 17 remember the one. I do absolutely
 18 positively remember the one signed by
 19 Mr. Barrett and Mr. Barefoot.

20 Q. I will represent to you --

21 A. Is this the same as the one
 22 that was signed?

23 Q. Well, it's not completely
 24 the same, you'll see.

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1 agreements which are probably more legal
 2 and less marketing. Mine was an attempt
 3 to be more marketing and more
 4 conciliatory and less legal.

5 Q. Not all that bad.

6 A. I would agree, it's not all
 7 that bad.

8 MS. HESSE: You want to take
 9 a break?

10 MR. HURTADO: Yeah, you want
 11 a short break?

12 MS. HESSE: Let's continue
 13 for a little bit.

14 MR. HURTADO: I think we are
 15 done in less than half hour or
 16 so.

17

18 (Whereupon, there was an
 19 off-the-record discussion.)

20

21 BY MR. HURTADO:

22 Q. I would like to show you
 23 what I have marked as Exhibit 10 in
 24 Barrett's deposition.

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1 A. Okay.

2 Q. But this is the one that was
 3 signed by both parties?

4 A. Got it.

5 Q. Okay. But I will represent
 6 to you that Exhibit Number 10, and this
 7 was confirmed by Mr. Barrett, is the
 8 version that was sent by Mr. Barefoot to
 9 Mr. Barrett on or about February 18,
 10 2002.

11 A. Uh-huh.

12 Q. Okay?

13 A. Okay.

14 Q. And you'll see that that was
 15 executed by Mr. Barefoot, correct?

16 A. Uh-huh.

17 Q. In fact, it's the very same
 18 signature as is on --

19 A. Okay.

20 Q. As is on this copy?

21 A. Sure.

22 MS. HESSE: Which is Exhibit

23 9.
 24 MR. HURTADO: Well, what I

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1 am pointing to is attached to
 2 Mr. Barrett's affidavit, but I
 3 guess we have more than one.

4 MS. HESSE: Which is Exhibit
 5 9.

6 MR. HURTADO: Oh, it is?

7 MS. HESSE: Yeah. Yeah,
 8 that affidavit is Exhibit 9 and —

9 MR. HURTADO: Oh, it's
 10 Exhibit 3 for some reason.

11 MS. HESSE: You marked the
 12 affidavit of Donald Barrett as
 13 Exhibit 3 and it is attached as
 14 Exhibit 3 to Exhibit 9, just for
 15 the record.

16 MR. HURTADO: I'm sorry.

17 MS. HESSE: So we know.

18 MR. HURTADO: Great.

19 BY MR. HURTADO:

20 Q. All right. So in looking at
 21 Exhibit Number 10, is it fair to say that
 22 Mr. Barefoot executed that agreement
 23 without any of the notes in the margin on
 24 it?

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1 writing expert, but if you look at the
 2 signature of Mr. Barefoot on Exhibit 9
 3 and the one on Exhibit 10 looks like the
 4 very same document, very same signature,
 5 doesn't it?

6 A. Absolutely.

7 Q. Yeah.

8 A. Okay.

9 Q. So is there anything on the
 10 document that Mr. Barefoot signed that
 11 says that the cost includes all
 12 royalties?

13 A. Well, there's this agreement
 14 that says it doesn't — it says cost will
 15 be \$5 and 4.32 and there's a second
 16 agreement signed by Mr. Barefoot again
 17 and Mr. Barrett that has these two
 18 points, which is probably the cause for
 19 some confusion.

20 Q. Meaning isn't it evident to
 21 you this signature was affixed prior to
 22 these notes being written down?

23 MS. HESSE: I'm going to
 24 continue my running objection that

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1 A. Correct.

2 MS. HESSE: Let me just
 3 object in the sense of we've got a
 4 lack of personal knowledge here,
 5 but go ahead.

6 THE WITNESS: Well, I was
 7 going to say the same thing
 8 actually without being a lawyer.

9 MS. HESSE: Okay.

10 THE WITNESS: That agreement
 11 or this agreement went and those
 12 conversations are from Barrett to
 13 Barefoot and Barefoot back to
 14 Barrett.

15 I may be somewhat in the
 16 dark, other than this one does not
 17 have those two points and this one
 18 does.

19 BY MR. HURTADO:

20 Q. And but Exhibit 10 was, in
 21 fact, signed by Mr. Barefoot; is that
 22 correct?

23 A. Correct.

24 Q. And I know you are not a

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1 this witness is not privy to the
 2 conversations or to -- it was not
 3 -- did not either send or receive
 4 these documents which upon which
 5 he's being asked and therefore I
 6 would like to have a standing
 7 objection on this issue.

8 MR. HURTADO: Okay.

9 BY MR. HURTADO:

10 Q. Mr. Stern, you have
 11 testified that in your view there is a
 12 contract, an executed contract, between
 13 Mr. Barefoot and Mr. Barrett; isn't that
 14 correct?

15 A. Absolutely. Yes.

16 Q. So I'm clarifying the basis
 17 for your belief that there is such a
 18 contract?

19 A. This is -- that is the only
 20 contract that I know of that has the
 21 signature of both Mr. Barefoot and
 22 Mr. Barrett.

23 Q. Okay. And let me sort of
 24 turn the question around a little bit,

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1 you don't have -- do you have any basis
 2 to believe that from this document that
 3 Mr. Barefoot signed this contract after
 4 these notations had been added?

5 A. I don't know.

6 Q. Okay. Are there any
 7 initials next to the notations in the
 8 Exhibit Number 9?

9 A. No.

10 Q. Okay. In your experience is
 11 it customary for parties to initial
 12 written changes to a contract to
 13 demonstrate that it was accepted?

14 A. That's generally the case, I
 15 would say.

16 Q. Mr. Stern, are you aware of
 17 where the -- where the Coral Calcium
 18 Supreme product that's being used to
 19 fulfill orders resulting from Coral
 20 Calcium shows are purchased?

21 A. I'm sorry?

22 Q. Let me do that again.

23 What manufacturer supplies
 24 the Coral Calcium to fulfill orders for

90
 1 MS. HESSE: I think that we
 2 want to object and make the same
 3 -- this is confidential and the
 4 terms of their agreement are
 5 confidential.

6 So if we can have the same
 7 agreement that we made with
 8 Mr. Barrett, then I think the
 9 witness would be more comfortable
 10 answering these questions.

11 MR. HURTADO: I would agree
 12 with that.

13 MS. HESSE: Okay.

14 You want to wait until the
 15 end or do it now?

16 MR. HURTADO: We can just
 17 do it now while we have it in our
 18 mind and designate from this point
 19 forward as attorneys' eyes only.

20 MS. HESSE: Okay.

21 THE WITNESS: So what is --
 22 where are we at?

23 MS. HESSE: We are in a --
 24 in a protective order from this

91
 1 the Coral Calcium show?

2 A. Most of them come from
 3 Pro-Tec and we will -- as I told you
 4 earlier in the afternoon, we will have
 5 Pro-Tec compete against other vendors for
 6 our business.

7 Q. Okay. Is product being
 8 supplied currently by any manufacturer
 9 other than Pro-Tec?

10 A. We have an order in place
 11 with another vendor. We contemplate an
 12 order potentially going to two other
 13 vendors and we have made Pro-Tec aware of
 14 that and Pro-Tec has -- has now gotten to
 15 a more competitive situation with us.

16 Q. All right. And by that you
 17 mean lowered its price?

18 A. Correct.

19 Q. But no product presently has
 20 been shipped by other manufacturers than
 21 Pro-Tec?

22 A. Not yet.

23 Q. And who are those other
 24 vendors?

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 1 point on, so it's only attorneys'
 2 eyes only at this point.

5
 6 C O N F I D E N T I A L
 7
 8

9 THE WITNESS: So the other
 10 vendors that we're contemplating
 11 is Holt Manufacturing in New
 12 Jersey, H-o-l-t, Cornerstone and I
 13 have to get you -- and they are in
 14 -- I want to say -- I have to get
 15 you -- Idaho, where was the
 16 Olympics?

17 MR. HURTADO: Utah.

18 THE WITNESS: Utah, they are
 19 in Utah, and then there's one on
 20 the West Coast and their name I
 21 want to say is Maxum (ph). Steve
 22 Richey could actually give you
 23 those three manufacturers and give
 24 you the correct spellings.

25 But I know those are three
 26 manufacturers they are
 27 contemplating, and there may be

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 1 more I don't know, and Pro-Tec
 2 knows that and they have been
 3 great, they reduced their price to
 4 us and -- and they have just been
 5 -- they probably will continue to
 6 get a big chunk of the business.

7 BY MR. HURTADO:

8 Q. Has Pro-Tec in any way
 9 changed the composition of the product?

10 A. I have no idea.

11 Q. Is there someone who might
 12 have an idea?

13 A. Pro-Tec.

14 Q. Is there anyone that you
 15 know of at Triad or King Media that's
 16 requesting that they change the
 17 composition of the product?

18 A. I don't know. I mean, if we
 19 request to make any change it will only
 20 be to improve the product.

21 Q. But you don't know of any
 22 changes that have been requested?

23 A. I don't know. I -- I don't
 24 know.

95
 1 probably the extent.

2 Q. Okay. Do you or King Media
 3 or Triad have any agreement or contract
 4 with Mr. Trudeau that grants you the
 5 right to use his name and likeness?

6 A. We have no contract with
 7 Mr. Trudeau. No contract with
 8 Mr. Trudeau.

9 Q. Has Mr. Trudeau asked you
 10 either, you know, directly or through
 11 counsel to stop airing the show?

12 A. Mr. Trudeau has -- had a
 13 conversation with me on Friday and
 14 Saturday and said that his compliance
 15 people have reviewed the infomercial and
 16 they recommended to Mr. Trudeau to make
 17 some edit changes in the show.

18 And my response to that was,
 19 whatever you want to do is fine. You --
 20 you are the guy, you are the expert in
 21 the production business, so whatever
 22 changes you have to make, make them and
 23 send the show over to -- to us.

24 Q. And that was this past

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 1 Q. Would Mr. Richey know?

2 A. He might.

3 Q. Okay. All right. Just a
 4 few more questions, actually.

5 Do you or your company as a
 6 matter of course have videotapes that are
 7 to be broadcast, reviewed for compliance
 8 with the Federal Trade Act or other state
 9 laws?

10 A. We don't as a matter of
 11 course.

12 Q. Do you do it in some
 13 instances?

14 A. We have helped assist people
 15 before. We said I think you might want
 16 to get this show looked at, but one of
 17 the things we don't do and we are not
 18 very good at is production. King Media
 19 or Triad are really not production guys,
 20 we do other good things but not that.

21 So we may say to somebody,
 22 hey, you might want to get this product
 23 looked at or, hey, you might want to get
 24 this product reviewed, and that would be

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 1 weekend?

2 A. Uh-huh.

3 Q. Were there any instances
 4 when Mr. Trudeau either himself or
 5 through his counsel requested that you
 6 stop airing the show?

7 A. Yeah, Mr. Bradford requested
 8 me stop airing the show.

9 Q. When was the first request?

10 A. When I first started talking
 11 to him five, six weeks after the show was
 12 on the air.

13 Q. About the time of the first
 14 correspondence between you and him,
 15 around January 10th?

16 A. Right around when it
 17 started, uh-huh.

18 Q. Okay.

19 A. I don't know if it was as
 20 early as January 10th. You would have to
 21 go back and look at the file and see when
 22 he actually --

23 Although it's interesting,
 24 he did send a letter after we had a

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1 conversation on that conference call and
 2 I explained to him everything that we
 3 were doing, and then he did follow up
 4 with a letter which was -- which was
 5 unusual, that he thanked Mr. Barrett for
 6 his continued cooperation not to air the
 7 show when in the previous date of that
 8 conference call we fully explained to him
 9 what we were doing with -- with that
 10 show. I found that most unusual.

11 Q. I think sometimes that's
 12 sort of legalese for trying to put a
 13 demand in a polite way.

14 Have you ever actually, you
 15 know, retained counsel to review any
 16 infomercials?

17 A. I had one production client
 18 who I asked -- he asked me if I would
 19 help him find somebody to review a show,
 20 and that's how I actually found
 21 Mr. Abrams, if that's who you are
 22 alluding to.

23 I found him through one of
 24 my other clients because I didn't know

100

1 well, it says -- let's just read this
 2 first sentence.

3 Let me give you a little
 4 background in what you will be receiving,
 5 there's a --

6 A. New.

7 Q. -- new infomercial called
 8 The Calcium Factor that I would like you
 9 to closely review. Along with the
 10 infomercial are two books that the author
 11 who appears in the show wrote. We have
 12 also included the label of the
 13 ingredients so you can see more of the
 14 product, although it is not specifically
 15 mentioned, nor does he endorse his own
 16 product in the infomercial?

17 A. Correct.

18 Q. Okay. Did Mr. Abrams, in
 19 fact, conduct the review that you
 20 requested here?

21 A. No, not even close.

22 Q. Did he do anything with
 23 respect to in response to this letter?

24 A. No.

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1 where to begin for something like this.
 2 It is just not something we practically
 3 deal with.

4 So this client asked me, I
 5 in turn asked the client if he could help
 6 me, and that's how I was able to find
 7 Mr. Abrams.

8 Q. Now that you have
 9 anticipated that, let's just take a quick
 10 look at that correspondence.

11 A. Sure. Sure.

12 Q. I'm showing you, Mr. Stern,
 13 what's been marked as Barrett 16?

14 A. Right.

15 Q. This is a letter from
 16 yourself, Allen Stern, to Mr. Jim Abrams,
 17 Esquire, dated January 28th, 2002, and
 18 you recognize this letter?

19 A. Absolutely.

20 Q. And you asked Mr. -- Well,
 21 you sent Mr. Abrams some materials
 22 relating to the Coral Calcium show?

23 A. Correct.

24 Q. And you asked him to --

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1 Q. Why not?

2 A. He called me.

3 Q. He called you?

4 A. Uh-huh.

5 Q. Okay. And he did not
 6 conduct any review?

7 A. Correct.

8 Q. Why not?

9 A. Because what I didn't
 10 communicate to him fully and completely
 11 in this note was that he was -- until he
 12 spoke with me he was under the
 13 impression, and maybe it is my own fault
 14 for not putting this in the letter, that
 15 I actually produced this Calcium Factor
 16 infomercial.

17 When I told him no, clearly
 18 we did not produce it, he then jumped to
 19 the next point. He said, oh, well, then
 20 the people who brought you the deal, they
 21 produced the show, and since you are in a
 22 deal with them they are asking you and
 23 you're asking them on their behalf to
 24 review the infomercial. I said, well,

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So he said, well, exactly going on here? And I said, well, I produced the infomercial or in the infomercial. So he -- we dialoguing a little bit and he it was odd that he was being review this show that neither I had nor had any control of or that who brought me the deal produced, and of just fell apart then.

All right. So based on that decided not to have a review done?

We just let it go.

Now, do you know if Abrams has or purports to have expertise in the area of FTC compliance?

Only as it relates to my who says he used him before and he seemed to be okay.

Your client said or your or your associate who referred you Abrams informed you that Abrams has expertise in the area of

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1 to whether or not you had had exposure to 2 the FTC based on that?

3 A. Didn't come up, wasn't even 4 part of the conversation.

5 Q. Were you, yourself, 6 concerned that you might have exposure to 7 the FTC?

8 A. No, it never went through my 9 mind.

10 Q. Not at all?

11 A. Not really, because I don't 12 know -- I don't know if the show is -- if 13 there's anything wrong with the show 14 whatsoever. I have no idea if there's 15 anything with his show that needs to be 16 changed or should be changed. If there 17 is, then Kevin should change it.

18 Q. Uh-huh. Would you be -- if 19 there were and it were not changed, would 20 you be concerned that you would be 21 exposed to liability to the FTC?

22 A. Not really. I mean, I 23 haven't really given that that much 24 thought.

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compliance?

Correct.

And your understanding based conversations with Mr. Abrams is that marketer of infomercials but as a producer of them you don't have exposure to liability to the FTC?

That's not what I said. Not close to what I said.

What I said to you was that Abrams found it rather odd that -- the person who brought me the Donald Barrett, would be asking for w of something which we had no over.

He said it would seem to him people who actually produced the they had any discomfort or even thought it was a wonderful show get that show reviewed prior to you he show.

It seemed to make sense to

Okay. So that didn't relate

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1 Q. Okay. As of the present 2 date, the Coral Calcium infomercial is 3 being aired?

4 A. Correct.

5 Q. Do you know what geographic 6 jurisdictions it's being aired in?

7 A. Not specifically, but it's 8 generally being aired.

9 Q. If I asked you certain 10 states, would you know whether it's being 11 aired there?

12 A. I mean, I can guess.

13 Q. No, I don't want you to 14 guess.

15 You don't have knowledge of 16 where they're being aired?

17 A. Our company has knowledge of 18 where they are being aired.

19 Q. The company meaning?

20 A. King Media.

21 Q. Is there someone at King

22 Media who would inform, let me finish, 23 anyone who could inform us regarding the 24 -- regarding where the infomercial is

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1 being aired?

2 A. I'm sure that our media
 3 department would run a report which shows
 4 where this show, what states the show has
 5 been aired in. I don't think that would
 6 be too problematic for them to do. They
 7 probably do that sort of thing every day.

8 Q. I would like to ask that be
 9 done and produced if possible.

10 MS. HESSE: I have some
 11 follow-up questions on that issue.
 12 I mean, is that your last
 13 question?

14 MR. HURTADO: No, but -- but
 15 I will put the request on the
 16 record that that be produced.

17 MS. HESSE: You can make the
 18 request and then I'm going to do
 19 some follow-up questions and then
 20 we can talk about a request
 21 later.

22 I mean, to be honest with
 23 you, I will -- we can talk about
 24 it between you and I later.

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1 Q. And it is possible that
 2 those cable stations reach Illinois
 3 markets, Illinois residents?

4 A. There's no doubt about it,
 5 that they would be able to -- able to get
 6 or see the show if we ran it on a cable
 7 station that they subscribe to.

8 Q. Is it possible that -- is it
 9 even possible to know whether or not what
 10 the market is for those cable stations?

11 A. What we know is the
 12 subscriber base and we buy based on
 13 eyeballs. That's how we buy, we buy
 14 based on how many potential eyeballs are
 15 out there, and then we negotiate a rate
 16 from that.

17 So I can't tell you how many
 18 -- how many subscribers in Cooke County,
 19 for example, might be able to see Bravo,
 20 and it's not even important to us. Even
 21 if I could, it's not important.

22 What's important to us is
 23 that is the time available and can we
 24 negotiate the rate, because we're always

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1 MR. HURTADO: Uh-huh, yeah.
 2 That's all I have.

3 - - -
 4 EXAMINATION
 5 - - -

6 BY MS. HESSE:

7 Q. Mr. Stern, do you buy media
 8 time in states or with stations?

9 A. Both.

10 Q. When you buy media -- buy
 11 with respect to states, how does that
 12 work?

13 A. Two ways: We either go in
 14 to the local markets and buy the local
 15 broadcast station in the market or we
 16 will buy a cable station that reaches
 17 across state boundaries.

18 Q. Okay. Has King Media
 19 purchased any air time in local Illinois
 20 stations?

21 A. No, not to my knowledge.

22 Q. Has King Media purchased air
 23 time with cable stations?

24 A. Correct. Yes, we have.

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1 negotiating rates, so that's what we base
 2 it on, availability of time and how far
 3 can we drive those rates down.

4 Q. Okay. Now, how many cable
 5 stations have you purchased air time?

6 A. For this show?

7 Q. Yes.

8 A. I don't know.

9 Q. Do you know how many local
 10 television stations you have purchased?

11 A. No, but we certainly could
 12 run a report that would give you and the
 13 court or whoever the stations, both
 14 broadcast stations and cable stations
 15 that this infomercial has appeared on.

16 Q. But such a report does not
 17 exist today?

18 A. No, but we could create it.

19 MS. HESSE: Okay. No
 20 further questions.

21 Do you have anything?

22 MR. HURTADO: No, only to
 23 restate the request that that
 24 information be generated and

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1 produced.
 2 MS. HESSE: What information
 3 are you talking about?
 4 MR. HURTADO: The
 5 information regarding the states
 6 in which the Coral Calcium show
 7 has been broadcast.
 8 MS. HESSE: Okay. All
 9 right. We will talk about it off
 10 the record.
 11 MR. HURTADO: That's it.
 12
 13 (Whereupon, the deposition
 14 concluded at 4:52 p.m.)
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 2 C E R T I F I C A T E
 3

4 I hereby certify that the
 5 proceedings and evidence noted are
 6 contained fully and accurately in the
 7 notes taken by me on the deposition of
 8 the above matter, and that this is a
 9 correct transcript of the same.

10
 11
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 13
 14 MARIA N. DAMIANI, RPR, CSR
 15
 16
 17

18 (The foregoing certification
 19 of this transcript does not apply to any
 20 reproduction of the same by any means,
 21 unless under the direct control and/or
 22 supervision of the certifying reporter.)
 23
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113

1 ACKNOWLEDGEMENT OF DEPONENT
 2 I, _____, do hereby
 3 certify that I have read the foregoing
 4 pages, _____ and that the same is a
 5 correct transcription of the answers
 6 given by me to the questions therein
 7 propounded, except for the corrections or
 8 changes in form or substance, if any,
 9 noted in the attached Errata Sheet.

10
 11 DATE
 12
 13 Subscribed and sworn to before me this
 14 day of _____,
 15 199_____
 16 My commission expires: _____
 17 Notary Public

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ALLEN STERN

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